

E-RATE CENTRAL

MEMO

E-Rate Central/CentralEd
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November 4, 2008

Total Pages:

Letter of Appeal

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Re: Request for Waiver of Deadline of a Decision of the Universal Service
Administrator in regard to Westbury UFSD
CC Docket No. 02-6
CC Docket No. 96-45

Funding Year:	2005
Applicant Name:	Westbury UFSD
Billed Entity Number:	123856
Form 471 Application #:	488304
FRN:	1354113

Background

On 10/29/2007, Novell submitted a Form 474 (SPI) for the FRN referenced above. On November 1, 2007, the Form 474 was denied for having a date that was before the Service Start Date on the Form 486 that Westbury UFSD had filed.

Subsequently during this time frame, Novell had personnel changes within its E-rate division. These staff changes resulted in the subsequent failure to re-file the FCC Form 474 on a timely basis by the 01/28/2008 deadline.

Because of these staff changes, it was only on July 1, 2008 that we were notified by Novell that the Form 474 had been rejected and, because the last date to invoice the SLD had past, we were asked to write an Invoice Deadline Extension.

The Invoice Deadline Extension was filed with the SLD on July 2, 2008 (Exhibit 1), only to be denied for the following reason: *"Current deadline guidelines and procedures do not allow approval for the reason submitted. Invoice Deadline Extension requests should be filed by the end of the relevant invoice receipt period for the service category of the FRN requiring an extension (120 days after the end of the service delivery date.) You did not demonstrate in your appeal that you filed an extension request in a timely manner. Therefore, the appeal is denied."*

Discussion

Novell filed their invoice in a timely manner by submitting the Form 474 to USAC on 10/29/2007, well before the Invoice Deadline of 01/28/2008. However, the Form 474 was denied because of Novell's clerical error. In addition, Novell's staff turnover led to their untimely realization that the FRN had not been paid by the SLD. These problems, which were beyond their control, led to their requesting that E-Rate Central file the Invoice Deadline Extension so that they could correctly resubmit the Form 474 to the SLD. USAC stated in their denial that an invoice extension should be filed in a timely manner, specifically "*120 days after the end of the service delivery date.*" When reviewing the current guidelines on the SLD website, there are NO guidelines for applicants stating that invoice extensions have to be filed 120 days after the last day to receive services.

USAC provides Invoice Deadline Extensions under certain conditions, one of which is for circumstances beyond the service provider's control. In our Invoice Deadline Extension request we stated that due to Novell not being aware that Westbury had incurred a delay in the use of the software that was applied for and approved for funding because of a delay in the install of servers on which the software was to be installed, and that Westbury therefore filed their Form 486 accordingly, Novell, unaware of these delays had filed a SPI with the SLD which was subsequently denied for having an incorrect date that did not match that of the Form 486 filed by Westbury. The Invoice Deadline Extension requested to extend the deadline in order to give Novell more time to re-invoice the SLD.

The FCC has granted numerous appeals for E-rate applicants when a procedural deadline was missed. These orders include: Bishop Perry, Alaska Gateway, State of Arkansas Department of Information Systems, and the Cannon-McMillan School District.¹

Highlighting the Alaska Gateway order, the commission stated "*given that the applicants missed a USAC procedural deadline and did not violate a Commission rule, we find that the complete rejection of each of these applicants is not warranted.*" We concur that submitting invoices on time rests on the applicant. However, there are instances where applicants should be given additional time to submit invoices. This is especially true in cases where the applicant is receiving discounted billing since once the invoice mode is set for Form 474s, only the service provider can refile the necessary invoices with the SLD.

In the Canon-McMillan School District decision (DA 08-2385, page 4, para. 6 and 7), the commission stated "*Generally, these applicants claim that staff changes or inadvertent errors on the part of their staff resulted in the late filing or failure to file the FCC Form 472 or FCC Form 474.*" "*Moreover, we emphasize that these applicants missed a procedural deadline and did not violate a substantive rule. In the Bishop Perry Order, the Commission found that, under certain circumstances, rigid adherence to certain E-rate rules and requirements that are "procedural" in nature does not promote the goals of section 254 of the Act – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.*²¹ *This is especially true in these circumstances, where the applicants are at the end of the process and have already received service and complied with all other E-rate program rules to date.*" It is important to highlight these issues, because we know that USAC sends notification letters to applicants if a Form 486 is not on file, but does not do so if a Form 474 mode of payment is set and the approval of funds is set to "0" when the deadline is approaching. If a notification letter was sent out consistent with the recommendations made by the FCC in both the Alaska Gateway and Arkansas decisions, we would have been aware at the time of the deadline that USAC had not received an accepted Form 474 and simply reminded the vendor that resubmission of the Form 474 was necessary for Novell to receive the already approved funding.

¹ Bishop Perry, FCC 06-54; Alaska Gateway, DA 06-1871; State of Arkansas Department of Information Systems, DA 08-1418; and Cannon-McMillan School District, DA 08-2385.

Conclusion

Under the four decisions discussed, Westbury UFSD should be given the same latitude for granting deadline extensions that previous decisions allowed for missed deadlines. Westbury did not violate a Commission rule by missing the invoice deadline, but an Administrator procedural deadline. Finally, due to the fact there is no evidence of waste, fraud, or abuse, we kindly request the SLD to grant an invoice extension.

Respectfully submitted this fourth day of November, 2008

Thank you

Sincerely,

A handwritten signature in black ink, appearing to read 'Alicia King', with a stylized flourish at the end.

Alicia King

E-Rate Coordinator

E-mail: aking@e-ratecentral.com

Web: www.e-ratecentral.com

EXHIBIT 1

E-RATE CENTRAL

MEMO

E-Rate Central/Central Ed
625 Locust Avenue, Suite 1
Garden City, NY 11530
Tel: 516-832-2885 • Fax: 516-832-2877

07/02/2008

Invoice Extension Request

Applicant: Westbury UFSD
Contact: Alicia S. King
Phone: 516-832-2885
Fax: 516-832-2877
E-mail: aking@centraled.com
Form 471: 488304
FRN: 1354113
Service Provider Name: Novell
SPIN: 143004863

Reason for Invoice Deadline Extension request:

When filing a SPI form which was subsequently rejected, Novell was not aware that Westbury UFSD had not installed the servers that the software was to be installed on until 02/15/2007, and were also unaware that the Form 486 service start dates were filed as 02/15/2007 as well because of the delay in the server installs until that date. Because Novell was not aware of the delay, and Westbury was not aware of how the vendor would be affected by this delay when they (Novell) went to invoice the SLD for the approved software, we are requesting an invoice deadline extension on this FRN so that Novell can correctly resubmit their invoice to USAC as these were circumstances beyond the service providers control.

On behalf of Westbury UFSD

Sincerely,

Alicia S. King
E-Rate Coordinator

EXHIBIT 2



Universal Service Administrative Company

Schools & Libraries Division

Administrator's Decision on Invoice Deadline Extension Request

September 5, 2008

Amy Buckner
Novell, Inc.
1800 South Novell Place
Provo, UT 84606

Re: Westbury Union Free School District

Re: Your appeal of the denial of your invoice deadline extension request

471 Application Number: 488304
Funding Request Number(s) 1354113
Correspondence Dated: August 20, 2008

After thorough review and investigation of all relevant facts, the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal.

Funding Request Number(s): 1354113
Decision on Appeal: **Denied in Full**
Explanation:

Current deadline guidelines and procedures do not allow approval for the reason submitted. Invoice Deadline Extension requests should be filed by the end of the relevant invoice receipt period for the service category of the FRN requiring an extension (120 days after the end of the service delivery date). You did not demonstrate in your appeal that you filed an extension request in a timely manner. Therefore, the appeal is denied.

If you believe there is a basis for further examination of your application, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the USAC/Schools and

Libraries web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

Thank your for your continued support of and participation in the E-rate program.

Schools and Libraries Division
Universal Service Administrative Company

cc:

Bretton L. Himsworth
E-Rate Central
625 Locust Avenue, Suite 1
Garden City, NY 11530